

### **REMARKS**

Claims 1-27 were pending in the application. Claims 1-25 and 27 have been cancelled, claim 26 has been amended and new claims 28-42 have been added. Therefore, claims 26 and 28-42 are currently pending.

No new matter has been added. Support for new claims 28-43 can be found, at least, in specification as originally filed in Table II on page 13 and on page 11, lines 13-14. Support for the amendments to claim 26 can be found for example at least on page 11, lines 13-14 and in Table II on page 13, of the specification as originally filed.

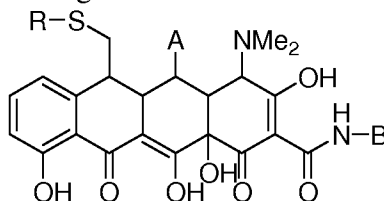
The specification has been amended to correct the application number of a priority document. Support for this amendment can be found in the prior applications section of the Application Data Sheet submitted concurrently with the instant application.

Amendment and/or cancellation of the claims should in no way be construed as acquiescence to any of the Examiner's objections or rejections. The amendment and/or cancellation of the claims is being made solely to expedite prosecution of the above-identified application. Applicants reserve the option to further prosecute the same or similar claims in the present or another patent application. The amendment and/or cancellation of the claims is not related to any issues of patentability.

#### ***Rejection of Claims under 35 U.S.C. §101***

Claims 1-27 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-27 of prior U.S. Patent No. 5,811,412. In addition, claims 26 and 27 are also rejected as claiming the same invention as claims 12 and 13 of prior U.S. Patent No. 5,064,821. Furthermore, claims 20 and 21 are rejected as claiming the same invention as claims 1 and 2 of prior U.S. Patent No. 5,589,470. Applicants respectfully traverse. Applicants respectfully submit that the obviates the rejection of these claims.

However, in the interest of expediting prosecution, claims 1-25 and 27 have been cancelled and claim 26 has been amended. Claim 26, as amended, is directed to 6-deoxy-13-(substituted mercapto) tetracycline compounds having the formula:

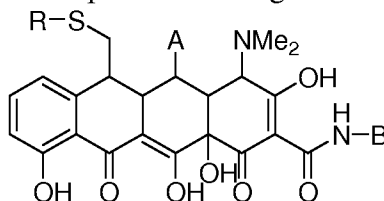


wherein A is hydrogen or hydroxyl,

B is hydrogen or comprises a morpholino group, and

R is alkyl, aryl alkyl, or aryl.

In contrast, U.S. Patent Nos. 5,811,412 and 5,064,821 are drawn to a class of 6-deoxy-13-(substituted mercapto) tetracycline composition useful in the therapeutic treatment of a tetracycline resistant cell in combination with other classes of tetracyclines, tetracycline analogues and tetracycline derivatives, said class of composition having the formula



wherein A is hydrogen or hydroxyl,

B comprises a morpholino group, and

R is an organic entity comprising 1-12 carbon atoms and optionally including heteroatoms.

Applicants respectfully submit that claim 26 of the current application does not claim the same invention as claimed in U.S. Patent No. 5,811,412 nor U.S. Patent No. 5,064,821. Therefore, Applicants respectfully request withdrawal of the rejection of claim 26 under 35 U.S.C. § 101.

***Rejection of Claims 1-24 under Nonstatutory Obviousness-type Double Patenting***

Claims 1-24 are rejected under non-statutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 5,064,821 and 5,589,470. Applicants respectfully submit that the cancellation of pending claims 1-24 renders this rejection moot.

Application No.: 10/770,883  
Docket No.: PKZ-012CPCN4

Examiner: Maasho, Kerima K  
Art Unit No.: 1609

**SUMMARY**

It is respectfully submitted that this application is in condition for allowance. If there are any remaining issues or the Examiner believes that a telephone conference with Applicants' Attorney would be helpful in expediting prosecution of this application, the Examiner is invited to call the undersigned at (617) 227-7400.

Dated: December 21, 2007

Respectfully submitted,

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